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Plaintiffs Patricia Johnson, Kent Harrison, and
Christina Labajo

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PATRICIA JOHNSON, KENT HARRISON, and
CHRISTINA LABAJO, Individuals, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

APPLE, INC., a California Corporation,

Defendant.

Case No.

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
EQUITABLE RELIEF**

JURY TRIAL DEMANDED

Plaintiffs Patricia Johnson, Kent Harrison, and Christina Labajo, on behalf of themselves
and all others similarly situated, by and through their undersigned counsel, bring this class action
for damages and equitable relief against Defendant Apple, Inc. Plaintiffs allege the following

1 upon information and belief based on the investigation of counsel, except as to those allegations
2 that specifically pertain to Plaintiffs, which are alleged upon personal knowledge:

3 **NATURE OF THE ACTION**

4 1. This is a civil action brought by Plaintiffs Patricia A. Johnson, Kent Harrison, and
5 Christina Labajo (together, “Plaintiffs”) on behalf of themselves and all others similarly situated
6 against Defendant Apple, Inc. (“Apple” or “Defendant”).

7 2. Apple is a multinational technology company that manufactures a wide range of
8 computer and consumer electronics products, including the iPhone smartphone. Apple has
9 brought out successive models of the best selling iPhone, each with fanfare and with marketing
10 efforts designed to convince existing iPhone owners to upgrade to the newest model. Among
11 other things, the newest iPhone model is generally advertised as faster than previous models.

12 3. In December 2017, responding to media reports that Apple throttles the speed of
13 older iPhones in order to encourage users to upgrade to the latest model, Apple admitted that it
14 uses updates to the iPhone’s operating system software (“iOS”) to slow down the central
15 processing unit (“CPU”) of models of the iPhone older than the now-current iPhone 8. Apple
16 stated it does this to better manage current demands with the iPhones’ aging batteries. Indeed,
17 replacing the battery will restore the lost speed, because the iOS update contains software that,
18 essentially, detects and uses the presence of an older battery as an excuse to throttle the speed of
19 the iPhone. However, installing the iPhone in an extended battery case will not restore the lost
20 speed, even though the extended battery case is often used by owners as a superior alternative to
21 replacing the iPhone’s internal battery. Also, the CPU speed is throttled arbitrarily even though
22 the internal “aging” battery is performing adequately and is perfectly capable of supplying all
23 current demands placed on it.

24 4. The revelations concerning Apple’s high-handed treatment of its customers
25 sparked consumer and media outrage. In an effort at damage control, and to partially
26 compensate owners of the iPhone 6 and iPhone 7, Apple lowered the price of a battery
27 replacement from \$79 to \$29--a \$50 savings--and has touted this as a solution to the problem it
28 created.

5. Plaintiffs and members of the proposed Class (defined below) all had their

1 iPhones' speed artificially throttled by Apple's iOS updates, without their knowledge or consent.
 2 Their iPhones now run at a slower speed and are less capable than they were before Apple
 3 infiltrated its "malware" under the guise of an operating system update. The situation is
 4 particularly pernicious because, ordinarily, an operating system update improves the security and
 5 performance of a computer device; but here, Apple deliberately used the iOS updates to do the
 6 opposite, slowing and impairing the performance of Plaintiffs' and Class members' iPhones.

7 6. Apple's actions and omissions violate laws including the Computer Fraud and
 8 Abuse Act, 18 U.S. Code § 1030 *et seq.*, and the Unfair Competition Law, Cal. Bus. and Prof.
 9 Code §§ 17200, *et seq.*; and constitute trespass to chattel, negligence and negligent
 10 misrepresentation.

11 7. Accordingly, Plaintiffs bring this case as a class action and, on behalf of
 12 themselves and other similarly situated persons, seek relief including damages, injunctive and
 13 equitable relief, declaratory relief, and attorney fees and costs.

14 **JURISDICTION AND VENUE**

15 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, because a
 16 claim under federal law is pleaded, and pursuant to the Class Action Fairness Act, 28 U.S.C. §
 17 1332(d), because the aggregate amount in controversy exceeds \$5 million, exclusive of interests
 18 and costs; the number of members of the proposed Class exceeds 100; and many members of the
 19 proposed Class are citizens of different states than the Defendant.

20 9. This Court has personal jurisdiction over the Defendant as it incorporated in
 21 California and has its main office in this State and in this Judicial District and/or the conduct
 22 complained of occurred in and/or emanated from this State and Judicial District.

23 10. Venue is proper in this Judicial District because Defendant resides in this Judicial
 24 District and/or the conduct complained of occurred in or emanated from this District.

25 **INTRADISTRICT ASSIGNMENT**

26 11. Venue is proper in this Judicial District and the San Jose division thereof pursuant
 27 to 28 U.S.C. section 1391 subsections (b) and (c), and Civil L.R. 3-2 subsections (c) and (e).
 28 Defendant resides in Santa Clara County within such division, and Defendant transacts business
 in this division and County and/or a substantial part of the events giving rise to the claims at

1 issue in the litigation arose in this division and County.

2 **PARTIES**

3 12. Plaintiff Patricia Johnson is and has at all relevant times been a resident of
4 California. Plaintiff has at all relevant times been an owner and user of the iPhone 5s
5 smartphone, subject to the speed throttling by Apple complained of herein. Following updates to
6 the iOS, Ms. Johnson has experienced significant degradation in the performance of her iPhone.

7 13. Plaintiff Kent Harrison is and has at all relevant times been a resident of
8 California. Plaintiff has at all relevant times been an owner and user of the iPhone 6s
9 smartphone, subject to the speed throttling by Apple complained of herein. Following updates to
10 the iOS, Mr. Harrison has experienced significant degradation in the performance of his iPhone.

11 14. Plaintiff Christina Labajo is and has at all relevant times been a resident of
12 California. She has three iPhones, an iPhone 6 Plus, an iPhone 6s Plus, and an iPhone 7, which
13 she and her children use, and which are subject to the speed throttling by Apple complained of
14 herein. Following updates to the iOS, Ms. Labajo and her children have experienced significant
15 degradation in the performance of the iPhones.

16 15. Defendant Apple, Inc. is a California corporation with principal place of business
17 in Cupertino, California.

18 16. Apple was founded in 1976 by Steve Jobs, Steve Wozniak and Ronald Wayne to
19 manufacture the innovative Apple personal computer. Today, Apple is a multinational
20 technology company providing a vast array of computer hardware and software products,
21 consumer electronics, and online services. The company's hardware products include the Mac
22 personal computer, the iPad tablet computer, the iPod portable media player, the Apple TV
23 digital media player, and the iPhone smartphone. The company's software products include a
24 wide range of creativity and productivity applications, as well as the macOS and iOS operating
25 systems.

26 17. Apple employs 123,000 employees and has 499 retail stores in 22 countries. It is
27 the world's largest information technology company and the world's third-largest mobile phone
28 manufacturer. Its online iTunes Store is the world's largest music retailer. Apple's worldwide
annual revenues totaled \$229 billion for the 2017 fiscal year.

SUBSTANTIVE ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**The iPhone Smartphone and Operating System**

18. Apple's iPhone was introduced in 2007, bringing innovative features such as a touch screen interface and a virtual keyboard to a broader audience. Considered by many as a revolutionary product, the Apple iPhone has driven growth for the smartphone market in each of the years since.

19. The iPhone has changed Apple's business dramatically. iPhone sales have risen strongly over the years, from around 1.4 million iPhones sold in 2007 to more than 201 million units sold worldwide in 2016. In total, Apple has sold more than one billion iPhones worldwide from 2007 to 2016. In the first quarter of 2017, iPhone sales accounted for more than 69 percent of Apple's total revenue, generating more than 54 billion U.S. dollars in revenues.

20. The commercial success of the iPhone is credited with helping to make Apple one of the world's most valuable publicly-traded corporations. In 2004, Apple's revenues were \$8 billion. By 2017, Apple's revenues had grown to more than \$215 billion.

21. The Apple iPhone is an innovative smartphone which runs Apple's iOS operating system ("iOS"). Featuring a large touch screen, the iPhone is more than just a phone, being essentially a hand-held computer with wireless telephone functionality as well as the ability to utilize a wide range of software utilities, applications and programs. The iPhone's ability to run applications software is very important for users, who typically use it for email, calendars, and a myriad of personal and business functions.

22. There have been eleven generations of the iPhone since it was first released in 2007. The thus far latest models were released in 2017: the iPhone 8 and 8 Plus, along with the iPhone X, which features face recognition.

23. Each new model of the iPhone is marked by fanfare and with marketing efforts by Apple designed to convince existing iPhone owners to upgrade to the newest model. Among other things, the newest iPhone model is generally advertised as faster than previous models.

24. Since iPhone users depend on their iPhones to run applications and do processor-intensive tasks, the speed at which the iPhone operates is an important factor for owners of the iPhone.

1 25. The iPhone depends on the iOS operating system, an integral foundation on which
2 the phone and all of its applications run. When Apple produces periodic updates to the iOS, the
3 iPhone prompts its owner to download and install the updates. Owners of iPhones are
4 encouraged by Apple to quickly update their phones to each new version of the iOS, since the
5 updates customarily address security issues as well as installing new features and functionality.

6 26. Apple advertises and represents, and owners are caused to believe that each new
7 iOS version will make their iPhone safer and more usable:

8
9 “iOS 11 makes iPhone so smart, it learns from you. So capable, it
10 helps you in more personal ways. And so useful, it’s more powerful
11 than ever.”

12
13 27. Plaintiffs and all Class members were notified by Apple of new updates to their
14 iPhone’s iOS. Apple advertised and represented that the iOS updates were necessary and would
15 improve the performance of their iPhones. Reasonably believing that such updates were
16 necessary and beneficial, Plaintiffs and Class members allowed the download and installation of
17 such iOS updates. Apple provided no notice or warning that the iOS updates would introduce
18 software that would impair the operation of the iPhone, by throttling its speed or otherwise.

19
20 **Apple Admits Throttling the Speed of Older iPhones, Including Those of**
21 **Plaintiffs and Class Members**

22 28. The iOS updates Apple infiltrated and installed unto Plaintiffs and Class
23 members’ iPhones immediately caused them to run more slowly, interfering with their ability to
24 run applications and engage in the tasks for which Plaintiffs and Class members had purchased
25 their iPhones.

26 29. Apple has now admitted that it used and uses the iOS updates to throttle the speed
27 of older iPhones. Apple claims that it does this to allow the iPhones’ aging batteries to operate
28 longer, but it is likely that the primary reason is to encourage iPhone owners to upgrade their
phones to the latest version, which is, in fact, the effect.

30. Apple was forced to admit its wrongdoing after users noticed and the media reported an anomalous connection between the age of the battery and the speed of the CPU for their iPhones--in particular, that the same iPhone that ran at a particular (slower) speed with its original battery would suddenly begin running faster once the battery was replaced. A Reddit thread beginning on December 10, 2017 contained multiple posts by iPhone users reporting that their older iPhones demonstrated higher CPU benchmark results after a battery replacement. Since the age of the battery normally has nothing to do with processor speed (even if an older battery may run down sooner), this was a strange result.

31. On December 18, 2017, following up on the Reddit reports, Geekbench's John Poole reported that he had analyzed the performance of the iPhone 6 and 7 following iOS updates:

While we expect battery capacity to decrease as batteries age, we expect processor performance to stay the same. However, users with older iPhones with lower-than-expected Geekbench 4 scores have reported that replacing the battery increases their score (as well as the performance of the phone). What's going on here?

--John Poole, *iPhone Performance and Battery Age*, GeekBench (Dec. 18, 2017), *found at* <https://www.geekbench.com/blog/2017/12/iphone-performance-and-battery-age/> (last visited Jan. 1, 2018).

32. Mr. Poole's investigation linked the condition to iOS updates: "To answer these questions I've plotted the kernel density of Geekbench 4 single-core scores for the iPhone 6s and the iPhone 7 running different versions of iOS." *Id.* Mr. Poole found that the CPU speeds were suspiciously battery-dependant, following iOS updates: "First, it appears the problem is widespread, and will only get worse as phones (and their batteries) continue to age. See, for example, the difference between the distribution of iPhone 6s scores between 10.2.1 and 11.2.0. Second, the problem is due, in part, to a change in iOS. The difference between 10.2.0 and 10.2.1 is too abrupt to be just a function of battery condition. I believe (as do others) that Apple introduced a change to limit performance when battery condition decreases past a certain point." *Id.*

33. As stated in the GeekBench article, "While this state is created to mask a deficiency in battery power, users may believe that the slow down is due to CPU performance,

1 instead of battery performance, which is triggering an Apple introduced CPU slow-down. This
 2 fix will also cause users to think, ‘my phone is slow so I should replace it’ not, ‘my phone is
 3 slow so I should replace its battery.’ This will likely feed into the ‘planned obsolescence’
 4 narrative.” *Id.* (emphasis added).

5 34. In response to the media reports, Apple released a statement admitting it has
 6 slowed down the performance of iPhone 6 and 7 models--without giving their owners
 7 notification or a choice in the matter--but Apple claimed it did so to better cope with aging
 8 batteries:

9 Our goal is to deliver the best experience for customers, which includes overall
 10 performance and prolonging the life of their devices. Lithium-ion batteries
 11 become less capable of supplying peak current demands when in cold conditions,
 12 have a low battery charge or as they age over time, which can result in the device
 13 unexpectedly shutting down to protect its electronic components. Last year we
 14 released a feature for iPhone 6, iPhone 6s and iPhone SE to smooth out the
 instantaneous peaks only when needed to prevent the device from unexpectedly
 shutting down during these conditions. We’ve now extended that feature to
 iPhone 7 with iOS 11.2, and plan to add support for other products in the future.

15 AppleInsider (Dec. 20, 2017), *found at* [http://appleinsider.com/articles/17/12/20/apple-](http://appleinsider.com/articles/17/12/20/apple-responds-to-reports-of-worn-battery-forcing-iphone-cpu-slowdown)
 16 [responds-to-reports-of-worn-battery-forcing-iphone-cpu-slowdown](http://appleinsider.com/articles/17/12/20/apple-responds-to-reports-of-worn-battery-forcing-iphone-cpu-slowdown) (last visited Jan. 1,
 17 2018).

18 35. Consumers reacted with understandable indignation to the confirmation of
 19 Apple’s high-handed behavior. As commentators noted, it was one of the few times that a
 20 conspiracy theory had been proven essentially right. “A long-running conspiracy theory among
 21 users of Apple products is that Apple intentionally slows down their older phones to force users
 22 to buy newer ones. Like most conspiracy theories, it’s completely ridiculous, but unlike most
 23 conspiracy theories, it’s actually kind of true.” Avery Thompson, *Apple Throttles Speed of*
 24 *Older iPhones*, Popular Mechanics, Dec. 20, 2017 (last visited Jan. 1, 2018).

25 **Apple’s Inadequate Remedial Program**

26 36. In an attempt to deal with the rising criticism, Apple issued an apology, and
 27 offered a \$50 discount on its battery replacement service--but just for the iPhone 6 and 7:

28 We’ve been hearing feedback from our customers about the way we handle
 performance for iPhones with older batteries and how we have communicated that

1 process. We know that some of you feel Apple has let you down. We apologize.

2 ...

3 Apple is reducing the price of an out-of-warranty iPhone battery replacement by
4 \$50 — from \$79 to \$29 — for anyone with an iPhone 6 or later whose battery
5 needs to be replaced, available worldwide through December 2018.

6 --Apple Letter, Dec. 28, 2017, *found at* <https://www.apple.com/iphone-battery-and-performance/>

7 37. As industry observers have noted, Apple's offer provides nothing to owners of the
8 iPhone 5 (and earlier iPhones) even though they are also affected by the Apple-imposed
9 slowdown. As stated by BGR:

10 As we thoroughly explained in a post on Monday, Apple has decided to reduce
11 the cost of iPhone battery replacements on older models to \$29 from \$79. The \$50
12 discount is something of a mea culpa, and it's available to anyone with an iPhone
13 6 or later even if the phone in question passes a diagnostic battery test at the
14 Apple store. Of course, this leaves us with an obvious question: What about
15 people with older iPhone models that were released before the iPhone 6?

16 The answer from Apple is, in a nutshell, is that you're S.O.L. The iPhone 5s and
17 earlier iPhone models are indeed being throttled by Apple's iOS software, which
18 means that CPU power is intentionally reduced in order to extend battery life.
19 That's fine in some circumstances, but not all users want their iPhones to be
20 limited. And what if you're using a battery case, which likely more than doubles
21 your iPhone's battery life? Unfortunately there's still no way to stop your older
22 iPhone from being slowed down unless you swap out the old battery, and Apple
23 will charge the full \$79 instead of the discounted \$29 fee.

24 --Jack Epstein, *What to do if your iPhone is too old for Apple's \$29 battery replacement*
25 *program*, BGR, Jan. 2, 2018, *found at* [http://bgr.com/2018/01/02/iphone-battery-replacement-](http://bgr.com/2018/01/02/iphone-battery-replacement-iphone-5s-slowdown-how-to/)
26 [iphone-5s-slowdown-how-to/](http://bgr.com/2018/01/02/iphone-battery-replacement-iphone-5s-slowdown-how-to/) (last visited Jan. 1, 2018).

27 38. Apple's offer is at best inadequate compensation for owners of the iPhone 6 and
28 7, and provides no conceivable compensation to owners of older iPhones, such as the iPhone 5.

29 39. While Apple attempts to focus attention on the need to replace aging batteries, in
30 fact, the "problem" is one that Apple created. The iOS updates slow CPU speed arbitrarily even
31 with batteries that are fully capable of powering the iPhone adequately, and long before a battery
32 is actually in need of replacement. Replacement of the internal battery restores the iPhone's CPU
33 to full speed only because the Apple-infiltrated software in the iOS update detects and uses the
34 age of the battery as an excuse to throttle the iPhone's speed--not because there is any inherent

1 connection between age of the battery and the speed of the CPU.

2 40. Furthermore, as noted by BGR, installing the throttled iPhone in an extended
3 battery case will not restore the lost speed. *See id.* This deprives iPhone owners of a valuable
4 battery option, given that the extended battery case generally provides more battery capacity
5 even than a new battery and is often used by owners as a superior alternative to replacing the
6 iPhone's aging internal battery.

7 41. Because of Apple infiltration of "slowdown" software into the operating systems
8 of their iPhones, Plaintiffs' and Class members' iPhones now operate at abnormally slow speeds.
9 Their value is diminished, and they are no longer as capable of running software applications and
10 performing in the manner intended.

11 42. Plaintiffs' and Class members have been harmed by Apple's conduct, and such
12 conduct represents a continuing danger to owners of the iPhone. Unless enjoined, Apple will
13 continue to use iOS updates to infiltrate software onto iPhones that are not of the latest model, in
14 an effort to slow those phones and render them less capable.

15 CLASS ACTION ALLEGATIONS

16 43. Plaintiffs bring this action on behalf of themselves and a Class ("Class") initially
17 defined as follows:

18 **"All persons in the United States who own or owned an Apple iPhone model**
19 **prior to the iPhone 8."**

20 Excluded from the Class are Defendant, its corporate parents, subsidiaries, officers,
21 directors, employees, and partners.

22 44. Plaintiffs reserve the right to amend the Class definition and to seek to define
23 and/or certify sub-Classes as may be deemed necessary.

24 45. This action has been properly brought and may properly be maintained as a class
25 action under Rule 23(a)(1-4), Rule 23(b)(1), (2) or (3), and/or Rule 23(c)(4) of the Federal Rules
26 of Civil Procedure and case law thereunder.

Numerosity of the Class

(Fed. R. Civ. P. 23(a)(1))

46. Members of the Class are so numerous that their individual joinder is impractical. The Class comprises at least hundreds of thousands of consumers. The precise number of Class members, and their addresses, are unknown to Plaintiffs at this time, but can be ascertained from Defendant's records. Members of the Class may be notified of the pendency of this action by mail or email, supplemented (if deemed necessary or appropriate by the Court) by published notice.

Predominance of Common Questions of Fact and Law

(Fed. R. Civ. P. 23(a)(2); 23(b)(3))

47. Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting only individual members of the Class. The common legal and factual questions include, without limitation:

(a) Whether Apple infiltrated software onto the subject iPhones which caused them to run at a slower speed;

(b) Whether Apple disclosed to Plaintiffs and Class members in advance that the iOS updates would throttle the speed of their iPhones;

(c) Whether Plaintiffs and Class members consented to having the speed of their iPhones throttled;

(d) Whether Apple was negligent in providing software updates which throttled the speed of the subject iPhones;

(e) Whether Defendant's practices, actions and omissions constitute unlawful, fraudulent and/or unfair business practices in violation of California Business and Professions Code section 17200 *et seq.*;

(f) Whether Defendant's actions violate the Computer Fraud and Abuse Act, 18 U.S. Code § 1030 *et seq.*;

(g) Whether Defendant's actions constitute trespass to chattel;

(h) Whether Defendant's actions constitute negligent misrepresentations; and

1 (i) The nature of the relief, including damages and equitable relief, to which
2 Plaintiffs and members of the Class are entitled.

3 **Typicality of Claims**

4 **(Fed. R. Civ. P. 23(a)(3))**

5 48. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs, like all
6 other Class members, had their iPhones speed throttled by iOS updates supplied by Defendant.

7 **Adequacy of Representation**

8 **(Fed. R. Civ. P. 23(a)(4))**

9 49. Plaintiffs are adequate representatives of the Class, because their interests do not
10 conflict with the interests of the members of the Class and they have retained counsel competent
11 and experienced in complex class action and consumer litigation.

12 50. The interests of the members of the Class will be fairly and adequately protected
13 by Plaintiffs and their counsel.

14 **Superiority of a Class Action**

15 **(Fed. R. Civ. P. 23(b)(3))**

16 51. A class action is superior to other available means for the fair and efficient
17 adjudication of the claims of Plaintiffs and members of the Class. The damages suffered by
18 individual members of the Class, while significant, are small given the burden and expense of
19 individual prosecution of the complex and extensive litigation necessitated by Defendant's
20 conduct. Further, it would be virtually impossible for the members of the Class individually to
21 redress effectively the wrongs done to them. And, even if members of the Class themselves
22 could afford such individual litigation; the court system could not, given the thousands or even
23 millions of cases that would need to be filed. Individualized litigation would also present a
24 potential for inconsistent or contradictory judgments. Individualized litigation would increase
25 the delay and expense to all parties and the court system, given the complex legal and factual
26 issues involved. By contrast, the class action device presents far fewer management difficulties
27 and provides the benefits of single adjudication, economy of scale, and comprehensive
28 supervision by a single court.

**Risk of Inconsistent or Dispositive Adjudications and the Appropriateness
of Final Injunctive or Declaratory Relief**

(Fed. R. Civ. P. 23(b)(1) And (2))

52. In the alternative, this action may properly be maintained as a class action because:

(a) the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class members, which would establish incompatible standards of conduct for the Defendant; or

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members of the Class not parties to the adjudications, or substantially impair or impede their ability to protect their interests; or

53. (c) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole.

Issue Certification

(Fed. R. Civ. P. 23(c)(4))

54. In the alternative, common questions of fact and law, including those set forth in Paragraph 47 above, are appropriate for issue certification.

FIRST CAUSE OF ACTION

(Computer Fraud and Abuse Act, 18 U.S. Code § 1030)

55. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein and plead this cause of action on behalf of themselves and all members of the Class.

56. Defendant's acts and omissions violate the Computer Fraud and Abuse Act, 18 U.S. Code § 1030 *et seq.* ("CFAA").

57. Class members' subject iPhones are protected computers within the meaning of the CFAA.

1 58. Defendant knowingly caused the transmission of a program, information, code, or
2 command, and as a result of such conduct, intentionally caused damage without authorization, to
3 the iPhones of Plaintiffs and Class members.

4 59. As a direct and proximate result of Defendant's violations of the CFAA, Plaintiffs
5 and Class members have suffered harm and damages.

6 60. Plaintiffs and Class members are therefore entitled to damages and other relief as
7 prayed for hereunder.

8 **SECOND CAUSE OF ACTION**

9 **(Negligence)**

10 61. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged
11 herein and plead this cause of action on behalf of themselves and all members of the Class.

12 62. Defendant owed a duty of care to Plaintiffs and members of the Class. Defendant
13 breached that duty.

14 63. Apple had a duty to take reasonable care in providing iOS updates to members of
15 the Class who had purchased its iPhones.

16 64. By the actions and omissions alleged herein, Apple violated its duty.

17 65. As a result of Apple's breaches and violations, Plaintiffs and Class members
18 suffered harm.

19 66. Apple's negligence was a substantial factor in the harm caused to Plaintiffs and
20 Class members.

21 67. At all relevant times, Plaintiffs and members of the Class acted lawfully and with
22 due care and did not contribute to the injuries suffered.

23 68. Accordingly, Plaintiffs and members of the Class are entitled to damages and
24 other appropriate relief, as prayed for hereunder.

25 **THIRD CAUSE OF ACTION**

26 **(Trespass to Chattel)**

27 69. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged
28 herein and plead this cause of action on behalf of themselves and all members of the Class.

1 70. By its actions, Defendant wrongfully trespassed on or against Plaintiffs and Class
2 members' personal property.

3 71. Plaintiffs and each member of the Class owned, possessed and/or had a right to
4 possess the subject iPhone/s.

5 72. By the actions alleged herein, Apple intentionally interfered with Plaintiffs and
6 Class members' use and possession of the subject iPhones and/or damaged the subject iPhones.

7 73. Among other things, Apple infiltrated software onto the subject iPhones under the
8 guise of providing a beneficial update to the iPhone operation system that, instead, impaired the
9 operation of the iPhone and caused the phone to run at an artificially slow speed.

10 74. Plaintiffs and members of the Class did not consent to Defendant's actions.

11 75. Plaintiffs and Class members were harmed.

12 76. Defendant's actions were a substantial factor in the harm caused to Plaintiffs and
13 Class members.

14 77. Therefore, Plaintiffs and members of the Class are entitled to damages and relief
15 as prayed for hereunder.

16 **FOURTH CAUSE OF ACTION**

17 **(Negligent Misrepresentation)**

18 78. Plaintiffs reallege, as if fully set forth, each and every allegation set forth above,
19 and plead this cause of action on behalf of themselves and all members of the Class.

20 79. Apple's actions and omissions alleged herein constitute negligent
21 misrepresentation.

22 80. Apple misrepresented material facts concerning the iOS updates it provided to
23 Plaintiffs and Class members.

24 81. Apple had no reasonable grounds for believing that its misrepresentations were
25 true.

26 82. Among other things, Apple provided iOS updates to Plaintiffs and Class members
27 representing that such updates should be installed on their iPhones and would provide benefits
28 and enhanced operability and performance. Apple knew but failed to disclose that, contrary to
its representations, the iOS updates would slow and impede the performance of the iPhones.

83. Apple made such misrepresentations with the intent to induce Plaintiffs and Class members to rely on its misrepresentations.

84. Plaintiffs and Class members had no knowledge of the falsity of Apple's misrepresentations and reasonably believed them to be true. In justified reliance on Apple's misrepresentations, Plaintiffs and Class members allowed the installation of the iOS updates on their iPhones.

85. As a direct and proximate consequence, Plaintiffs and Class members suffered harm. The changes to the operating systems of their iPhones made by the iOS updates caused their iPhones' speed to be throttled and the performance of their iPhones to be adversely affected.

86. Plaintiffs and Class members are therefore entitled to damages and relief, as prayed for hereunder.

FIFTH CAUSE OF ACTION

(Violations of the Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*)

87. Plaintiffs reallege, as if fully set forth, each and every allegation set forth above, and plead this cause of action on behalf of themselves and all members of the Class.

88. Defendant's business practices as complained of herein violate the Unfair Competition Law, Cal. Bus. & Prof. Code sections 17200, *et seq.* ("UCL").

89. Defendant's practices constitute "unlawful" business practices in violation of the UCL because, among other things, they violate statutory law and the common law.

90. Defendant's actions and practices constitute "unfair" business practices in violation of the UCL, because, among other things, they are immoral, unethical, oppressive, unconscionable, unscrupulous or substantially injurious to consumers, and/or any utility of such practices is outweighed by the harm caused consumers.

91. Defendant's actions and practices constitute "fraudulent" business practices in violation of the UCL because, among other things, they have a capacity and tendency to deceive members of the public.

92. As a result of Defendant's wrongful business practices, Plaintiffs and Class members have suffered injury in fact.

93. Defendant's wrongful business practices present an ongoing and continuing threat to the general public.

94. Accordingly, Plaintiffs and Class members are entitled to judgment and equitable relief, and to attorneys' fees and costs of suit, as prayed for hereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class pray for relief and judgment against Defendant, as follows:

- A. Certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, certifying Plaintiffs as representatives of the Class and designating Plaintiffs' counsel as counsel for the Class;
- B. Awarding Plaintiffs and the Class compensatory damages, in an amount exceeding \$5,000,000, to be determined by proof;
- C. Awarding Plaintiffs and the Class statutory damages;
- D. Awarding Plaintiffs and the Class punitive damages;
- E. For declaratory and equitable relief, including restitution and disgorgement;
- F. For an order enjoining Defendant from continuing to engage in the wrongful acts and practices alleged herein, and prohibiting Defendant from including any software in iOS updates that will throttle the speed of iPhones;
- G. For injunctive relief requiring Defendant to take steps to repair the injury caused by its wrongful conduct;
- H. Awarding Plaintiffs and the Class the costs of prosecuting this action, including expert witness fees;
- I. Awarding Plaintiffs and the Class reasonable attorney fees;
- J. Awarding pre-judgment and post-judgment interest; and
- K. Granting other relief as this Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiffs Patricia Johnson, Kent Harrison, and Christina Labajo hereby demand trial by jury of all claims so triable.

Respectfully submitted,

Date: January 16, 2018

By: /s/ Gordon M. Fauth, Jr.

Gordon M. Fauth, Jr.

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